IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

THURSDAY, THE 6TH DECEMBER 2007 / 15TH AGRAHAYANA 1929

CRP.No. 1072 of 2007()

AGAINST THE ORDER DATED 11/10/2007 IN EP 37/2004 IN OS.177/1998 of MUNSIFF COURT,KATTAPPANA
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REVN. PETITIONER: JUDGMENT DEBTOR NO.2 & DEFENDANT NO.4:

JOSEPH @ ROKEY, S/O.LATE AUGUSTINE,
EDASSERY HOUSE, NARIYAMPARA KARA,
KATTAPPANA VILLAGE, IDUKKI DISTRICT.

BY ADV. SRI.P.C.SASIDHARAN

RESPONDENTS: DECREE HOLDER/PLAINTIFF & JUDGMENT DEBTOR NO.1/DFNDT.3:
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1. A.N. MADHAVAN PILLAI,
S/O. NARAYANAN PILLAI, ATHIRA HOUSE,
NEDUMKANDAM KARA, KALKOONTHAL VILLAGE,
IDUKKI DISTRICT.

2. THOMAS @ ROY @ TOMY,
S/O. LATE AUGUSTINE, EDASSERY HOUSE,
NARIYAMPARA KARA, KATTAPPANA VILLAGE.

BY

THIS CIVIL REVISION PETITION HAVING COME UP FOR ADMISSION ON 06/12/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.N. KRISHNAN, J.

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C.R.P. NO. 1072 OF 2007

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Dated this the 6th day of December, 2007.

O R D E R

This revision petition is preferred against the order of the Munsiff, Kattappana in E.P.37/04 in O.S.177/98. By the said order the learned Munsiff has directed issuance of warrant against the judgment debtors. The warrant is pursued against the legal representatives of the deceased Thomas Augustine. The suit was originally dismissed and subsequently it was allowed in appeal and the appellate judgment very clearly indicates that "the suit is decreed with costs allowing the plaintiff to recover the plaint amount of Rs.65,000/- with 18% interest per annum from the date of suit till realisation from the assets of the deceased Mr. Thomas Augustine to the extent they have come to the hands of the defendants." So, the decree only postulates recovery of the amount from the assets of the deceased Thomas Augustine if they had come into possession of the present judgment debtors who are the legal representatives. Therefore, it is clear that there cannot be any personal

execution against the legal representatives but they can be only proceeded against with respect to the property which they hold or derive from the deceased Thomas Augustine on his death as his legal representatives. Therefore, the order under challenge is set aside and the execution petition is dismissed. But the decree holder is granted permission to file a fresh E.P. for proceeding against the assets of the deceased Thomas Augustine in the hands of the legal representatives. The question whether the legal representatives are in possession of any of the assets of Thomas Augustine is a matter that has to be considered by the Court in the fresh execution proceedings.

The C.R.P. is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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